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TO:

Ms. Wendy Dixon DOE/YM  
[NAME OF RECIPIENT]

[RECIPIENT'S ORGANIZATION/COMPANY]

800.967.0739  
[FAX NUMBER]

[DATE]

[PAGES (INCLUDING COVER SHEET)]

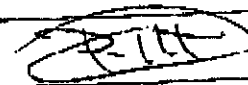
FROM:

Robert Holden  
[NAME]NATIONAL CONGRESS OF AMERICAN INDIANS  
NUCLEAR WASTE PROGRAM  
1301 CONNECTICUT AVENUE, N.W., SUITE 200  
WASHINGTON, D.C. 20036OFFICE: 202-466-7767  
FAX: 202-466-7797

COMMENTS:

Please replace the  
original cover/transmission letter  
with this one. The only changes  
are # of tribal members of NCAI  
and signature of Susan instead  
of Sue Masten.

Thank you



NATIONAL CONGRESS OF AMERICAN INDIANS/NUCLEAR WASTE PROGRAM

FAX TRANSMISSION

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## NATIONAL CONGRESS OF AMERICAN INDIANS

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February 28, 2000

## EXECUTIVE COMMITTEE

PRESIDENT  
Susan Masten  
Yurok Tribe

FIRST VICE PRESIDENT  
W. Ron Allen  
Jamesown S'Kallam Tribe

RECORDING SECRETARY  
Juana Mael  
Pauma-Yuima

TREASURER  
Frieda Stevens, Jr.  
Oneida of Wisconsin

## AREA VICE PRESIDENTS

AMERDEEN AREA  
Gerald M. Clifford  
Ojibwa Sioux

ALBUQUERQUE AREA  
Stanley Piro  
Zia Pueblo

ANADARKO AREA  
Mamie Kudnicki  
Prairie Band of  
Pottawatomie of Kansas

BILLINGS AREA  
William Old Chief  
Blackfoot Tribe

JUNEAU AREA  
Mike Williams  
Yup'ik

MINNEAPOLIS AREA  
Bernida Churchill  
Mille Lacs Band of Ojibwa

MUSKOGEE AREA  
S. Diane Kelley  
Cherokee Nation

NORTH EAST AREA  
Alma R. McKim  
St. Regis Mohawk Tribe

PHOENIX AREA  
A. Brian Wallace  
Washoe Tribe of NV/CA

PORTLAND AREA  
Finest L. Stonigan  
Quar d'Alene Tribe

SACRAMENTO AREA  
Melvin C. Hess  
Bishop Paiute Tribe

SOUTH EAST AREA  
A. Bruce Jones  
Lumbee Tribe

## EXECUTIVE DIRECTOR

JoAnn K. Chase  
Nandan, Hidatsa & Arikara

Ms. Wendy R. Dixon, EIS Project Manager,  
Yucca Mountain Site Characterization Office,  
Office of Civilian Radioactive Waste Management  
U.S. Department of Energy  
P.O. Box 30307 MS 010  
North Las Vegas, NV 89036-0307

Dear Ms. Dixon:

Thank you for including the comments of The National Congress of Americans (NCAI) in the Department of Energy (DOE) Draft Environmental Impact Statement (DEIS) for a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain Nevada Test Site. The NCAI is the oldest largest national Indian advocacy organization in the country and has a membership of 210 American Indian and Alaska Native governments.

The NCAI respectfully requests an extension of today's deadline for comments. Because of the inability of technical staff to respond to the voluminous material in the DEIS, tribes in the Yucca Mountain area have contacted the NCAI to support them in requesting a 90-day extension. A postponement in this comment deadline will enable more tribes to weigh in on this most important issue.

Thank you for accepting into the record our comments on this important issue. If you have any questions regarding our comments, please call Robert Holden, Director of the NCAI Nuclear Waste Program, (202) 466-7767, fax 466-7797.

Sincerely,

*Susan Masten*  
*Robert Holden for*

Susan Masten  
President

Attachment

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**Comments of the National Congress of American Indians on the  
Department of Energy Office of Civilian Radioactive Waste Management  
Draft Environmental Impact Statement for a Geologic Repository for the  
Disposal of Spent Nuclear Fuel and High-Level Radioactive Waste  
at Yucca Mountain, Nevada Test Site**

**February 28, 2000**

**Introduction**

The National Congress of American Indians submits the following policy and procedural issues that are among the many concerns of tribal governments in evaluating the Department of Energy (DOE) Office of Civilian Radioactive Waste Management's (OCRWM) for the Draft Environmental Impact Statement (DEIS) for a geologic repository for the disposal of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada Test Site.

**Comments**

2 1. The impacts of this federal action upon indigenous peoples, lands, and resources is critical to the human rights of the people to reside in their homelands. The NCAI does not believe that the impacted tribal governments of this federal action have had an ample opportunity to analyze and respond to the full inventory of technical studies performed at Yucca Mountain. This is not to say they have not received notice of the studies and progress reports done during the site characterization. Without exception, tribal governments in the Yucca Mountain region have not had the luxury of acquiring a team of technical experts to assess the data and conclusions. The DOE is well aware of the fiscal barriers which prevents tribes from assembling a research team. The NCAI believes the DOE has a fiduciary responsibility to provide the Yucca Mountain area tribes with resources that would enable them to respond to the Draft EIS |

3 The relationship between the federal government and tribal governments originates from treaties which were signed following the formation of the United States between these sovereigns. A guiding principle of the tribal/federal relationship is the legally enforceable trust responsibility of the United States to protect tribal self-determination, tribal lands, assets, resources and treaty rights, as well as carry out the directions of federal statutes and court cases. One of the intents of the federal guardianship is to mitigate the devastating effects of loss of lands upon which the tribal populations have lived for thousands of years. The obligations of the tribal trust doctrine are often perceived as burdensome to federal officials when embarking on federal actions which impact tribal governments and peoples. This is because of the government to government notice and consultation requirements necessary for federal guardianship can be time consuming, will cause delays in scheduling, and are added costs to the respective agency or contractor. |

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4 There are various points in the history of this country when individuals own up to misgivings and inaction of the federal government in exercising their responsibilities. For instance, the goal of Indian Reorganization Act of 1934 (IRA), 25 U.S.C. s.465, was to provide for the recovery of the Indian land base and reestablish tribal economic, governmental and cultural life. One of the IRA's principal authors, Congressman Howard of Nebraska, noted at that time, "...[T]he land was theirs under titles guaranteed by treaties and law; and when the government of the United States set up a land policy which, in effect, became a forum of legalized misappropriation of the Indian estate, the government became morally responsible for the damage that has resulted to the Indians from its faithless guardianship."

5 The tribes in the Yucca Mountain region still maintain close historic and cultural ties with the land. The total ecosystem is a living entity and the spirits and beings that dwell there to this day are still meaningful to them and as real and vivid as you and I and the people in this room. Many tribal people indigenous to the Yucca Mountain region have informed DOE officials that this area has special meaning and expressed opposition to the project.

6 continued below The Draft EIS does not go far enough to address cumulative impacts which are likely results because of past present and future impacts from NTS activities. For instance, the DOE mentions a proposed federal action to return certain lands of the Timbisha Shoshone. An important factor left out regarding this return is that the land was subjected to years of radioactive fallout from the Nevada Test Site. The amount of radiation exposure experienced by the indigenous people residing in the area has not been assessed nor have any baseline health studies been conducted. The people still living in the area may have experienced significantly higher levels of exposure because of the many exposure pathways common to Native American peoples. The added impacts of long term releases from the transportation of radioactive waste and spent nuclear fuel can not be accurately calculated. The status of the Indian nation populations should give rise to a higher degree of assurance that they will be protected from increased exposures.

2. The status of the Indian nation populations should give rise to a higher degree of assurance that they will be protected from increased exposures. The Draft EIS does not go far enough to address cumulative impacts which are likely results because of past present and future impacts from NTS activities. For instance, the DOE mentions a proposed federal action to return certain lands of the Timbisha Shoshone. An important factor left out regarding this return is that the land was subjected to years of radioactive fallout from the Nevada Test Site. The amount of radiation exposure experienced by the indigenous people residing in the area has not been assessed nor have any baseline health studies been conducted. The people still living in the area may have experienced significantly higher levels of exposure because of the many exposure pathways common to Native American peoples.

6 continued on The absence of previous exposure data also is important regarding impacts of long term releases from the transportation of radioactive waste and spent nuclear fuel. A

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true picture of potential impacts from transportation exposure can not be accurately calculated unless information from past Nevada Test Site releases can be added to the projected exposure data.

6 continued A joint NCI/CDC effort to assess human health impacts from bomb testing at the NTS is currently underway. The people whose homelands are near the Nevada Test Site were subjected to multiple detonations of atomic weapons. This project affirms what Native American peoples in the area have known for years--that radioactive fallout caused significant negative health impacts which includes chromosomal damage, debilitating diseases, and mortality.

Utmost protective considerations must be accorded to the people indigenous to this area. An apparent conclusion or response to the Timbisha land return issue may be that the reservation is being created well after the Yucca Mountain has begun, thereby absolving the DOE of its trust responsibility. Once again, the Timbisha Shoshone have lived there thousands of years prior to any encroachment or intrusion of federal actions.

The fact of primary habitation of indigenous peoples, whom the federal trust responsibility is to protect, is an important point in regard to the divergence of opinion of ground-water protection requirements. The Native American tribes and citizens are entitled to assess the viability of the water protection issues. The DOE acknowledges that further studies of impacts are needed along transportation corridors. The tribes do not have emergency response programs in place and are isolated from federal, or other assistance in emergency situation. At the pace and funding level proposed by current DOE officials charged with delivery of emergency preparedness program planning for corridor states and tribes, when the shipments commence, even several years from now, it does not appear that tribes will be ready. Tribal governments will continue to have unmet needs and unfunded mandates.

7 3. The potential adverse impacts regarding transportation include cultural integrity, health, and economic considerations. The existing transportation routes and construction of new rail and highway infrastructure could destroy significant cultural sites. Even though mention is made that preconstruction surveys may occur, modification or relocation of these routes would not necessarily happen based on the Department's assessment of whether rerouting is "reasonable." Tribal importance of cultural integrity becomes secondary to the whims of DOE archaeologists and anthropologists. It is an important point that the archaeologists and anthropologists conducting the studies and surveys are non-Indian and, it is our understanding, not from the Yucca Mountain region.

8 continued on page 6 The DEIS does not include information regarding Indian nations and their current and future economic development initiatives. Tribes along potential corridor routes are investing in tribal and joint economic ventures and which facilities will be along highway transportation routes contained in the DEIS. As part of the trust responsibility to ensure protection of economic well-being of Indian nations, the document needs to include a section of what can be done in the event of a radioactive waste transportation accident

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8 which impacts an Indian tribe as the mitigation and liability circumstances can be quite  
continued different than state and local government considerations.

9 4. The DEIS mentions Native American beliefs, working group input, and concerns.  
The document does not appear to incorporate the cultural beliefs into the analysis,  
which can only mean that the DOE does not accept the belief systems of the  
indigenous cultures. The DEIS also does not go very far in explaining the trust  
10 responsibility and how that will be carried out in the event of disagreement in project  
implementation. Although some of the problems may be guided by existing regulations  
and statutes, there are many instances of disagreement and need for consultation with  
tribal leaders and decision-makers regarding resolution of these differences. What  
shape and form the tribal consultation procedures will be and how executive orders on  
consultation will be implemented into the process are not included in the document.